

#### Drawings

The Examiner stated that the application contained color photographs and these photographs would only be accepted if the conditions for accepting color drawings had been satisfied. Applicant will submit the requisite petition to accept colored drawings upon receipt of notification of allowable subject matter.

#### Claim Rejections – 35 U.S.C. Section 112, First Paragraph

Claims 1-11 were rejected under 35 U.S.C. Section 112, first paragraph. Applicant respectfully traverses this rejection.

Claims 1-11 have been deleted. To the extent that this rejection still applies, Applicant will now address this rejection with respect to new claims 12-29. Marigold hybrid 50011 is a hybrid marigold plant produced from two inbred parents (See page 5, lines 1-6). Applicant herewith encloses a declaration by the undersigned attorney averring that a deposit of two thousand five hundred (2500) seeds of marigold hybrid 50011 have been made with the American Type Culture Collection under the terms of the Budapest Treaty and that the seeds will be irrevocably and without restriction or condition released to the public upon the issuance of a patent.

The Examiner also made a rejection with respect to claim 9. Claim 9 has been deleted.

Therefore, in view of the submission of this declaration, Applicant submits that this rejection should be removed.

Claims 2, 6, 7 and 9-11 are rejected under 35 U.S.C. Section 112, first paragraph, as containing subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor at the time the application was filed had possession of the claimed invention. Applicants respectfully traverse this rejection.

Claims 2, 6, 7 and 9-11 have been deleted. Therefore, Applicant submits that this rejection has now been rendered moot.

#### Claim Rejections – 35 U.S.C. Section 112, Second Paragraph

Claims 9-10 are rejected under 35 U.S.C. Section 112, second paragraph as being indefinite. Claims 9-10 have been deleted. Therefore, Applicant submits that this rejection has now been rendered moot.

#### Claim Rejections – 35 U.S.C. Section 102/103

Claims 2, 6, 7, 9, 10 and 11 are rejected under 35 U.S.C. Section 102(b) as anticipated by or, in the alternative, under 35 U.S.C. Section 103(a) as obvious over Russ et al. Claims 2, 6, 7, 9, 10 and 11 have been deleted. Therefore, Applicant submits that this rejection has now been rendered moot.

In view of the aforementioned amendments and arguments, Applicant submits that the claims are in connection for allowance.

If any additional fees are incurred as the result of the filing of this paper, authorization is given to charge deposit account number 23-0785.

Respectfully submitted,

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**CERTIFICATE OF MAILING**

I hereby certify that this Amendment is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington D.C., 20231 on September 23, 2002.

